



August 15, 2000

Mr. Roland Castaneda
Dallas Area Rapid Transit
P.O. Box 660183
Dallas, Texas 75206-0163

OR2000-3101

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138017.

The Dallas Area Rapid Transit ("DART") received a request for a specific DART transit police report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin with your claims under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to a child's delinquent conduct, or a child's conduct indicating a need for supervision, that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Family Code § 51.03.

Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age.

The report at issue does not involve a child's delinquent conduct or conduct indicating a need for supervision. *See* Family Code § 51.03. Thus, the report is not confidential pursuant to section 58.007(c) of the Family Code.

You also raise section 552.101 in conjunction with common law and constitutional privacy. Section 552.101 also encompasses information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests. The first interest is an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976).¹ The second individual privacy interest involves matters that are outside the zones of privacy but that nevertheless implicate an "individual's interest in non-disclosure or confidentiality." Open Records Decision No. 455 at 4 (1987) (quoting *Fadjo v. Coon*, 633 F.2d 1172, 1175 (5th Cir. 1981)). To determine whether a given situation triggers the constitutional right to privacy, this office applies a balancing test, weighing the individual's interest in privacy against the public right to know the information. See Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

In reviewing the submitted report, we have found no information that is confidential under common law or constitutional privacy. Therefore, with the possible exception of a social security number discussed below, DART may not withhold any of the submitted information under section 552.101.

Finally, you claim that the submitted report is excepted from required public disclosure under section 552.108. Section 552.108 now excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal

¹The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

reasoning of an attorney representing the state
[and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a), (b), .301(e); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not explained, nor does the information itself indicate, how release of the requested report would interfere with the detection, investigation, or prosecution of crime. Moreover, you have not shown how any subsection of section 552.108 applies to except the report. Thus, you must release the report to the extent that the information is not confidential by law.

We note that the submitted report contains a Texas identification number. Section 552.130 of the Government Code prohibits the release of information that relates to "a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a)(3). Therefore, under section 552.130, DART must withhold the Texas identification number.

The submitted report also contains a social security number. Section 552.101 also encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes confidential social

security numbers and related records that have been obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* In this case, it is not apparent to us that the social security number contained in the submitted report has been obtained or maintained by DART pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes DART to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue here is confidential under section 405(c)(2)(C)(viii)(I). We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, DART should ensure that the number has not been obtained or maintained by DART pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, DART must withhold the Texas identification number contained in the submitted report under section 552.130. In addition, pursuant to section 552.101, DART must withhold the social security number contained in the report if the number meets the criteria of section 405(c)(2)(C)(viii)(I). DART must release the remainder of the submitted report to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 138017

Encl: Submitted documents

cc: Ms. Marilyn McKinney
1320 Laura Lane
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(w/o enclosures)